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No. 76-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

BENEFICIAL FINANCE CO. OF GARY, INC., *Petitioner,*

v.

DOROTHY ALLEN, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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August 1976

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner, the Beneficial Finance Co. of Gary, Inc., prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the District Court is reported at 393 F. Supp. 1382 and is reproduced as Appendix A hereto (pp. 1a-6a, *infra*). The opinion of the Court of Appeals is reported at 531 F.2d 797 and is reproduced as Appendix B hereto (pp. 7a-25a, *infra*).

JURISDICTION

The judgment of the Court of Appeals was entered on February 9, 1976. (App. C, p. 26a, *infra.*) A timely filed petition for rehearing and suggestion of rehearing en banc was denied on May 11, 1976. (App. D, p. 27a, *infra.*) The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTION PRESENTED

The Truth in Lending Act requires that a lender disclose to a borrower certain information relating to any consumer loan. A provision of Regulation Z, promulgated under the authority of the Act by the Federal Reserve Board, requires that disclosures be "in meaningful sequence."

The question is whether the meaningful sequence standard is satisfied by a method of disclosure used by many consumer finance companies that first states the total number of monthly installments and the amount of each installment and the resulting total amount to be repaid by the borrower and, in subtractional sequence thereunder, the finance charge and the amount financed and elements of the latter.

STATUTES AND REGULATIONS INVOLVED

Section 105 of the Truth in Lending Act, 82 Stat. 148, 15 U.S.C. § 1604, provides:

> "The [Federal Reserve] Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith."

Section 226.6(a) of Regulation Z, 12 C.F.R. § 226.6 (a), promulgated by the Federal Reserve Board pursuant to the Truth in Lending Act, provides:

> "(a) *Disclosures; general rule.* The disclosures required to be given by this Part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology prescribed in applicable sections. Except with respect to the requirements of § 226.10, where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this Part and all numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of 10 point type, .075 inch computer type, or elite size typewritten numerals, or shall be legibly handwritten."

STATEMENT

This is a suit under the Truth in Lending Act alleging that the defendant consumer finance company, petitioner here, violated the Act and Federal Reserve Board's Regulation Z thereunder because its disclosures to respondent of information pertinent to the loan were inadequate. Petitioner is one of a number of consumer finance subsidiaries of Beneficial Corporation; those subsidiaries maintain 1466 offices in 48 states for the making of consumer loans.

By the suit respondent, a co-maker of a note given in consideration of a $1,750 loan repayable in 36 monthly installments over three years, requested the statutory penalty of $1,000 and attorney's fees. The District Court granted summary judgment for respondent on the ground that the required disclosures were not "in meaningful sequence," as required by

Section 226.6(a) of Regulation Z, 12 C.F.R. § 226.6(a), and the Court of Appeals affirmed.

The courts below did not hold that any information required to be disclosed either by the statute or by Regulation Z was not disclosed or was disclosed incompletely or inaccurately. The sole ground of decision was that the disclosures were not in meaningful sequence.

The disclosure statement in issue is set out at pages 6a and 24a-25a, below. As the Court can see, the principal items of disclosure are set out in subtractional order. Initially, in a box there appear the date of the loan, the due dates of the first and last installment payments, the amount of each installment and the number of installments. Then at the head of the left-hand column, the product of the number of installments and the amount of each installment is stated as "total of payments." Under this there are shown "precomputed charges" and "finance charge," which are in the same amount because they are equivalents.[1] The difference, "amount financed," is shown next and is designated as item 1. It is followed in the left-hand column of the form by items numbered 3 through 9. These are charges against the "amount financed" for insurance costs and premiums and official filing fees. In the actual statement here deductions are shown for disability and life insurance and insurance on the household goods that were security for the loan and a filing fee. All of these

[1] "Finance charge" is the statutory and Regulation Z term for the amount that the borower must pay for credit, Act § 106, 15 U.S.C. § 1605; 12 C.F.R. § 226.4, which may include charges other than interest. "Precomputed charges" is the term prescribed by the Indiana Consumer Credit Code for the cost of credit. Setting forth the two in the same amount is intended to show that the finance charge in any particular case consists exclusively of the precomputed charges and nothing else.

are items that are required by Regulation Z to be disclosed. 12 C.F.R. §§ 226.8(b)(3); (d)(1), (3).

Item 2 is stated separately from the other principal elements of the amount financed, in a column immediately to the right. Item 2 is the net balance of a prior loan being paid off with proceeds of the new loan. Item 2 is near the bottom of this right-hand column and is the amount remaining after items clearly described as rebates are deducted from the unpaid balance of the prior loan, which appears at the head of the column. Space available at the end of this column is used to record the nature of the security[2] and to indicate the "annual percentage rate" of interest, which is a required disclosure, 12 C.F.R. § 226.8(b)(2). In addition, there is a space for recording a default charge, which was unused here, as explained at page 14, note 5, below.

In a box to the right of the second column, the import of items 1 through 9 is explained by a statement that the lender "has disbursed, from the Amount Financed, the proceeds of loan for items 2 through 9 shown to the left hereof and for those items shown below as follows." What follows are lines 10, for any closing costs relating to real estate, and 11 through 14, for any disbursements on the borrower's behalf to his or her creditors or vendors, none of which was pertinent in the case at hand. Finally, there is shown the amount of the "cash or check delivered to borrowers," which is stated to be "Line 1 less sum of lines 2 through 14."

Disclosure of the nature of the security for the loan, the method of computing delinquency charges and the

[2] A code number, intended primarily for internal use and not for disclosure to the borrower, is recorded here. The nature of the security is disclosed to the borrower at another place on the form.

method of computing rebates of the finance charge and other charges if the loan is paid off early is made elsewhere on the form. These are required disclosures. See 12 C.F.R. § 226.8(b)(4), (5), (7).

A subtractional format substantially identical to the format of the disclosure statement in this case has been used by all Beneficial consumer finance subsidiaries. Many other consumer finance companies use or have lately used a similar format for their disclosure statements. The format is consonant with a computer program that permits production by a central computer, without risk of error of human computation and at significant savings, of loan disclosure and customer ledger documents all at once through a computer terminal in a finance company office. The original computer program on which the system used by petitioner and systems used by other major consumer lenders are based was so designed as to begin with the total amount that would have to be repaid and work downward by subtracting the finance charge to obtain the amount financed and thereunder its elements. At the time the program was worked out and adopted (and, indeed, to date), nothing in the statute, Regulation Z or rulings of the Federal Reserve Board thereunder reasonably suggested that such a logical format did not fully comply with truth-in-lending disclosure requirements. In its original Regulation Z pamphlet the Federal Reserve Board published as a model a disclosure statement that was in the same subtractional sequence. Reading not downward but from left to right—which is of course no difference at all—it began with the total of payments and continued with "finance charge" and "amount financed" and then, after stating the "annual

percentage rate," set forth some charges that go into the amount financed.[3]

While acknowledging that "the requirements of meaningful sequence mandate no one arrangement and can be fulfilled in many ways," the Court of Appeals found two such requirements that it held were violated by the disclosure statement here. The first requirement the court found implied by the "meaningful sequence" requirement is that terms in a disclosure statement that are logically related should be grouped together. Under this heading the Court of Appeals refused to consider the logic of the groupings of items in the statement before it and subjected the organization of the disclosure form to criticism of a kind that might be addressed to almost any effort to treat a relatively complex matter compendiously. The second requirement that the court found was that "disclosures of related terms be made in a logically sequential order." Under this heading it held that a disclosure statement that is in subtractional order is not logically sequential because of the court's a priori belief that "[t]he subtractional method" does not "make sense . . . to the borrower." (Pp. 12a-19a, *infra*.)

REASONS FOR GRANTING THE WRIT

The question posed by the Court of Appeals' decision in this case is an important question under the Truth in Lending Act that should be resolved by this Court. The question is whether the Court of Appeals

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[3] The form, appearing at page 26 of the pamphlet "What You Ought to Know About Truth in Lending—Consumer Credit Cost Disclosure," published by the Federal Reserve Board in advance of the effectiveness of the Truth in Lending Act on July 1, 1969, is set forth as Appendix E hereto at page 28a below.

is correct that only a grouping and ordering of disclosure terms that satisfies its view of what borrowers want is acceptable by the standards of the Act and Regulation Z. The question is important doctrinally because, in undertaking to monitor in finicky detail the form of, and the order of items in, disclosure statements required by the Act, the Court of Appeals has intruded deep into the area that Congress in the Act reserved for the Federal Reserve Board. As this Court said in *Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 365 (1973), "Congress determined to lay the structure of the Act broadly and to entrust its construction to an agency with the necessary experience and resources to monitor its operation," and it therefore "delegated to the Federal Reserve Board broad authority to promulgate regulations necessary to render the Act effective." The question is important practically because the Court of Appeals' decision that a subtractional order of disclosure for the important terms of a loan does not comply with the Reserve Board's regulation affects all of the disclosures made under the Act by Beneficial subsidiaries operating in almost every state and by many other consumer finance companies. Subject to the limitations of Section 130 of the Act, 15 U.S.C. § 1640, the decision threatens these companies with having to defend numerous actions, including class actions, claiming the full statutory liability and attorney's fees.

1. Section 129 of the Truth in Lending Act, 15 U.S.C. § 1639, requires the disclosure of certain information in connection with the granting of a consumer loan such as is involved in this case. Section 105 of the Act, 15 U.S.C. § 1604, authorizes the Federal Reserve Board, in unusually broad terms, to prescribe regula-

tions to carry out the purposes of the Act, and the Board has additional specific authority to prescribe by regulation what information shall be disclosed and how it shall be disclosed, §§ 121, 122, 15 U.S.C. §§ 1631, 1632.

In pursuit of its rulemaking authority the Board has promulgated Regulation Z, 12 C.F.R. Pt. 226. Section 226.8(a), (b), and (d) sets forth the items that must be disclosed in connection with a consumer loan. Section 226.6(a) provides that disclosures required by the Board's regulations (for open-end credit accounts and credit sales as well as for consumer loans) "shall be made clearly, conspicuously, in meaningful sequence . . . and at the time and in the terminology prescribed in applicable sections." Only the requirement of disclosure in meaningful sequence is at issue here. There is no doubt that all required disclosures (and some not required but allowed by the regulations) were made by petitioner and that they were made timely, clearly and conspicuously and used the terminology required.

On the authoritative view of the Board, there is nothing esoteric about the meaningful sequence requirement. The Board has said in one of a number of questions and answers set forth in its Regulation Z pamphlet for plain-English guidance:

> "Q: Do disclosures have to be made in the order they appear in the Regulation?
>
> "A: No, but they must be listed in an order which will be meaningful to your customers. (Reg. Z/226.6(a))" FRB, *Truth in Lending, Regulation Z* at 79 (Oct. 28, 1975).

More formally, in an interpretative letter, the Board has said that, in general, "[t]he objective is to furnish the customer a clear and meaningful disclosure of the credit terms and other information in respect to the

transactions," and specifically as to the meaningful sequence standard:

> "The words 'in meaningful sequence' in § 226.6 (a) relate to a presentation of required disclosures in a logical order with respect to those items which have an arithmetical relationship to each other. For example, many of the items called for in § 226.8(b), (c) and (d) are arithmetical and follow each other in logical progression. The remaining items are informative and have no particular interdependence. A meaningful sequence would call for those items which are arithmetically related to appear within a reasonable proximity to each other, not mixed with items which are irrelevant to a progression or arithmetical computations or thought." Public Position Letter No. 780, April 10, 1974, CCH Consumer Credit Guide ¶ 31,102.

The Board has said that "[i]t would seem that there are a multitude of ways by which the creditor could meet these [disclosure] requirements of the Regulation." Public Position Letter No. 545, Nov. 4, 1971, CCH Consumer Credit Guide ¶ 30,759. Nevertheless, and despite the deference owing to the Board's interpretations that other lower federal courts have recognized,[4] the Court of Appeals held here that, broadly, there is only one way to satisfy the disclosure requirements: that the only meaningful sequence of disclosure

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[4] See Bone v. Hibernia Bank, 493 F.2d 135, 139 (9th Cir. 1974); Eby v. Reb Realty, Inc., 495 F.2d 646, 650 (9th Cir. 1974); Douglas v. Beneficial Finance Co., 469 F.2d 453, 456 (9th Cir. 1972); Philbeck v. Timmers Chevrolet, Inc., 499 F.2d 971, 977 (5th Cir. 1974); Barksdale v. Peoples Financial Corp. of Alpharetta, 393 F.Supp. 112, 114 (N.D. Ga. 1975); McTerry v. Household Finance Corp., CCH Consumer Credit Guide ¶ 98,803 (N.D. Ga. 1974); McDaniel v. Fulton National Bank of Atlanta, CCH Consumer Credit Guide ¶ 98,683 at 88,261 (N.D. Ga. 1974).

of arithmetically related items is one that begins at the top with the principal components of the "amount financed" and works down by addition to that amount and thence, by addition of the finance charge, to the total amount to be paid. That is because, on the court's view,

> "People do not normally conceive of a loan from a subtractional point of view. They do not start from a total amount of payments and work backwards subtracting a finance charge and other charges so as to arrive at the amount they want to borrow. Borrowers conceive of a loan from exactly the reverse perspective. They have in mind an amount they want to borrow; they want to know how much it will cost in terms of a finance charge; then they add these together (plus other charges) and arrive at their total payments. The subtractional method may make sense to the lender, but not to the borrower." (Pp. 18a-19a, *infra*.)

This statement of the court's rationale for its major holding is a mishmash of obvious enough truths and wholly unwarranted assumptions as to what borrowers want from a disclosure statement. A borrower of course is interested in knowing how much money he will get. Indeed, a borrower typically will come to a loan company's office with, as the court suggests, a desired amount in mind. The borrower knows that figure when he starts; it need not be disclosed to him. Moreover, the net proceeds are the one term of the loan that he is bound to learn with precision without the benefit of a disclosure statement. All he need do is look at the check or count the cash when the proceeds of the loan are delivered to him.

Congress proceeded on an assumption as to borrower's needs very different from that of the court

below. As explained by the Board in the introductory section of Regulation Z,

> "the purpose [of the Act] is to assure that every customer who has need for consumer credit is given meaningful information with respect to the cost of that credit which, in most cases, must be expressed in the dollar amount of finance charge, and as an annual percentage rate computed on the unpaid balance of the amount financed." Regulation Z § 226.1(a)(2), 12 C.F.R. § 226.1(a)(2).

The Board goes on to explain that "[o]ther relevant credit information must also be disclosed so that the customer may readily compare the various credit terms available to him from different sources and avoid the uninformed use of credit." *Id.* The objective thus is to disclose the cost of credit from a particular source and enable the would-be borrower to shop around or even so enlighten him as to what it will cost him to borrow the money he wants that he will make do with what he has.

The Board has been made responsible for attempting by its administration of the Act to further that objective. It alone has the power to make regulations governing the form and content of disclosure statements for the purpose of fulfilling the statutory purpose. The intrusion of the court into the area reserved for the Board is clear on the face of the court's opinion. If more proof of the intrusion were needed, the Board's staff has supplied it in a letter that, temperately but unmistakably, states the Board's flat disagreement with the court's reading of the Board's regulation. The letter was written in response to an inquiry made after the decision below, referring to it and asking whether it correctly stated what the Board's regulation required. The entire letter is reproduced below.

(App. F, pp. 29a-31a, *infra.*) Among other things, the staff said that Section 226.6(a), which states the meaningful sequence requirement, as interpreted in Letter 780 quoted above, does *not* set

> "forth any particular 'arithmetical progression' which must be used in making disclosures. In staff's opinion, the Regulation does not require all presentations to be made within the rigid confines of some particular series of additions or subtractions."

The attempt of the Court of Appeals to dictate the order of disclosure when the Federal Reserve Board says that to do so is inappropriate is the more egregious because of the court's insistence that "the elements of the amount financed . . . be arranged in a summation column with the principal terms, the net balance of the refinanced loan and the amount disbursed to the borrowers at the top." (Pp. 16a-17a, *infra.*) The fact is that the net balance of a refinanced loan and the amount of the proceeds of the loan are figures that are not required by Regulation Z to be disclosed and are therefore not subject to the "meaningful sequence" standard, which applies only to "[t]he disclosures required to be given" by Regulation Z. § 226.6(a).

In the left-hand column of its form petitioner has grouped in logical and meaningful sequence those items that must be disclosed under Regulation Z: the total of payments, the finance charge, the amount financed and certain "charges" that must be itemized separately if they are not included in the finance charge. 12 C.F.R. § 228.8(d)(1). The charges that must be itemized, the Board has ruled, do not include amounts payable to other creditors or used to refinance an existing loan,

Letters Nos. 271, March 6, 1970, and 967, Dec. 4, 1975, and of course the loan proceeds paid to the borrower are not on any view "charges." Voluntarily and in keeping with the full disclosure spirit of the statute and the regulation, petitioner in the next column makes a detailed accounting of the payoff of the existing loan and in the box farther to the right an accounting of payments to other creditors and a statement of the loan proceeds.

When this point is understood, the captious criticisms that the court makes of petitioner's disclosure statement for not "group[ing] together terms which are logically related" (p. 14a, *infra*) are seen to be empty. The left-hand column groups in logical sequence all arithmetically related items that have to be disclosed. The next column shows another important item to which the amount financed will be applied before the borrower or his other creditors or his vendor see any of the proceeds of the loan—the net balance of the prior loan. The way the net balance is derived, by subtracting rebates from the nominal unpaid balance of the loan at the head of the column, is shown also. Space at the bottom of this column is used for items required to be disclosed but not arithmetically related—the important annual percentage rate and the default charge, which, contrary to the court's view, is not a term that is arithmetically related to other terms.[5] Finally, in the

[5] As the Court will see, the "default charge" line in the statement in issue is blank. The disclosure regarding the default charge is in the text immediately below describing "delinquency charge." In Indiana the legally prescribed default or delinquency charge for late payment is 5% of the unpaid amount of an installment (but not more than $5) so that the item cannot be stated in advance as a single number. The level of the court's understanding is indicated by its reference to the default charge as an item arithmetically related to the other disclosed terms of the loan. (P. 18a n.5, *infra*.) The level of the court's desire to understand is indicated by its misreading of an imperfectly printed number so as to conclude that the elements of "amount financed" did not add to the total of "amount financed." (P. 17a & n.3, *infra*.) The figure that the court sets out as $111.73 is in fact $111.78, which serves to reconcile the total "amount financed" and its parts.

box to the right there is voluntary disclosure of any payments to other creditors or vendors (there were none in this case), a statement of what is left—the cash or check delivered to the borrower—and a clear explanation of how the amount of the latter was derived.

The Court should take this matter in hand at this time to ensure maintenance of the exclusive authority of the Federal Reserve Board to determine, within the broad confines of the Act, what credit disclosures are to be required and in what form. The Court of Appeals has clearly overstepped proper judicial bounds and has cast itself in the role that Congress meant for the Board.

2. The desirability that the Court act now on the issue posed by this case is emphasized by the practical consequences of the decision below. For the future, disclosure forms can be changed, and petitioner as a precautionary matter has acted to amend its forms to comply as best it knows how with the Court of Appeals' opinion. (At all times, of course, petitioner's forms are under review with the idea of making them as useful instruments of disclosure as possible.) What other finance companies using the subtractional order of disclosure condemned by the court are doing in this regard is not known to petitioner.

Petitioner does know, however, that the subtractional order has been in very general use in the the consumer

finance industry. The reason is that the advent of truth-in-lending approximately coincided with the installation by major members of the industry of central computers and computer terminals in local offices whereby calculations can be made and documents prepared without the risk of human error or the use of human time and energy. Savings from computerization, the long-term effect of which must be to keep the cost of credit below that it would otherwise be, have been significant. The pioneers in finance company computerization composed computer programs that begin with the total of payments, the product of the monthly installment and the number of months of payment, and proceed to subtract the finance charge therefrom to obtain the amount financed and then to list the various deductions from the amount financed that diminish the borrower's ultimate loan proceeds. They believed that this was a logical order. So far as a form cast in that order would be used for truth-in-lending disclosure purposes, the program authors and their legal advisers reasonably believed, based on the statute, Regulation Z and the Board's interpretations of Regulation Z. that this logical order also constituted a meaningful sequence of disclosure.

Now, under the decision below, the finance companies that adopted the subtractional order are faced with the possibility of a vast number of lawsuits under Section 130 of the Act. All that need be shown to prevail in such a suit—as in this one—is failure to comply with the Act or Regulation Z. No damages need be shown. The claimed liability in any individual suit can be twice the amount of the finance charge up to $1,000 plus attorney's fees. In a class action a total recovery of the lesser of $100,000 or 1 percent of the defendant finance company's net worth is allowed. Section 130(e), to be

sure, establishes a one-year statute of limitations, but Beneficial subsidiaries alone wrote a million consumer loans totaling $1.3 billion in the 12 months ended June 30, 1976.

Even if, as we believe, other courts will properly defer to the Federal Reserve Board and will not follow the decision below, the defense of the number of lawsuits that might be filed and contested before it was established that the Seventh Circuit was wrong would result in a serious drain on the resources of the finance companies involved. If the court below is as plainly wrong as we believe it to be, it would be no favor to prospective plaintiffs to be encouraged to proceed with such lawsuits. This Court can and should settle the matter now.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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August 1976

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT, N. D. INDIANA,
HAMMOND DIVISION.

DOROTHY ALLEN, *Plaintiff*,

v.

BENEFICIAL FINANCE COMPANY, *Defendant*.

No. H 75-2.
May 1, 1975.

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Memorandum Opinion and Order

ALLEN SHARP, *District Judge*.

The Court is presented with cross-motions for summary judgment in this case. Both plaintiff and defendant state that there is no genuine issue as to any material fact raised by the complaint and that they are entitled to a judgment as a matter of law. The Court has perused the briefs filed and now agrees that there is no triable issue of material fact and that the question of damages is foreclosed by 15 U.S.C. § 1640(a)(1), and is a statutory amount.

The Court assumes jurisdiction pursuant to 15 U.S.C. § 1640(e).

FACTS

On April 2, 1974 Dorothy C. Allen signed a note as co-borrower. Her ex-husband was named as the principal borrower. Beneficial Finance, Inc. is the creditor and the holder of the note. See exhibit A. The plaintiff also signed the Statement of Disclosure and thereon acknowledged that she received a copy of said statement of disclosure. The note of April 4, 1974 included the unpaid balance of a prior loan and the total finance charge was $714.42.

On January 3, 1975 the plaintiff filed a complaint alleging violations of the Truth in Lending Act and Regulation

Z, 12 CFR § 226.6. Plaintiff alleged that there was one or more disclosure violations and the plaintiff prayed for the statutory penalty and attorney fees. Subsequently, both parties moved for summary judgment.

Summary judgment is appropriate only when there are no disputed issues of fact and only legal issues remain. It is not sufficient to say that since both parties moved for summary judgment there are no disputed issues of fact. It is well settled that a Court's duty to ascertain whether facts remain in contention is not obviated by cross-motions for summary judgment. Eby v. Reb Realty Co., 495 F.2d 646 (9th Cir. 1974). Also, in certain cases summary judgment is inapposite because the legal issue is so complex, difficult or insufficiently highlighted that further factual elucidation is essential for its prudently considered resolution. *Id.* at 649.

The one fact which may be in controversy in this action is whether or not the plaintiff received a copy of the disclosure statement. However, the Court finds that the plaintiff was a co-maker, and, as such, the creditor was not required to furnish her with a copy. 12 CFR § 226.6(e). 15 U.S.C. § 1631(b).

ANALYSIS

The Truth in Lending Act was designed to provide for mandatory disclosure requirements upon those institutions who extend credit to consumers. The purpose was to assure meaningful disclosure of the cost of credit so that consumers could compare various credit terms and avoid the uninformed use of credit. 15 U.S.C. § 1601. The Truth in Lending Act reflects a transition in Congressional policy from a philosophy of let-the-buyer-beware to one of let-the-seller-disclose. See Mourning v. Family Publications Service, Inc., 411 U.S. 356, 93 S.Ct. 1652, 36 L.Ed.2d 318 (1973). The Truth in Lending Act is a remedial statute designed as much as possible to permit borrowers to make informed judgments about the use of credit. To effectuate this congressional purpose requires that the

act's terms be liberally construed. *Eby*, supra, at 650; Scott v. Liberty Finance Co., 380 F.Supp. 475 (D.C.Neb. 1974); Philbeck v. Timmers Chevrolet, Inc., 499 F.2d 971 (5th Cir. 1974); Sellers v. Wollman, 510 F.2d 119 (5th Cir. 1975).

The question for the Court is whether or not the defendant's Statement of Disclosure is in compliance with the requirements of the Truth in Lending Act and Regulation Z. 12 CFR § 226.1 et seq.

FINDINGS

The Court has examined the Statement of Disclosure with care and in light of the statute and regulations. The Act and Regulation Z also require that all disclosures be made in "meaningful sequence". 15 U.S.C. § 1631; Reg. Z.

A glance at the putative "disclosures" made by the defendant to plaintiff on "Exhibit A" reveals how poorly defendant has attempted to even minimally comply with the law. Examples are:

(a) Defendant has combined closely together what appears to be an "Unpaid Balance-Prior Loan" with "Rebates" opposite to and to the right of the apparent new transaction. A person is unable to easily determine if the transaction consists of a loan of $2484.00 or $1232.00;

(b) In the apparent "new transaction" the "Precomputed Charges" is similar in amount to the Finance Charge" leading to confusion as to which item is the real cost of credit:

(c) The "Amount Financed" is separated from the "Total of Payments" by the "Precomputed Charges" causing confusion as to how one arrived at the "Amount Financed":

(d) The "Amount Financed" is on "line 1", with "line 2" on the lower right hand of a separate column, leading to confusion as to the relationship

between lines 1, 2 and 3 and how one arrives at the figure of "Net-Balance-Prior Loan" on line 2;

(e) No total of lines 3, 4, 5, 6, 7, 8 and 9 are computed, leading to confusion of their relationship to line 1 and line 2 and when the subtraction, if it applies, occurs to reach a net balance;

(f) The "Annual Percentage Rate" is below line 2, but does it apply to line 2 ("Net Balance-Prior Loan" or line 1 ("Total of Payments") or to the "Unpaid Balance-Prior Loan" of $1232.00, found directly above the column holding the Annual Percentage Rate;

(g) The "Cash or Check Delivered to Borrowers" is apparently the net proceeds to the Borrowers but is found to the far right, middle of the sheet with no explanation of just how one arrives at that figure and what happened to the amount of the loan, apparently $2484.00;

(h) No total of the "Rebates" is computed leading to confusion of their relationship to the "Unpaid Balance-Prior Loan" and the figure of $1031.56, "Net Balance-Prior Loan" and how the $1031.56 relates to the "Total of Payments" or the "Amount Financed";

(i) Lender says it has disbursed "the proceeds of loan for Items 2 through 9, but one is not sure from what that total is deducted or if lines 2 through 9 are to be deducted or subtracted from the "Finance Charge", "Total of Payments" or "Net Balance-Prior Loan."

(j) One finds the "Security" description starting in the upper right hand corner of the statement with "security (cont.)" in the middle of the page and no connection between the two for continuity or for the mind to connect the two portions of the page in any meaningful sequence.

It can be seen that such figures and their placement and relation to one another are not in "meaningful sequence".

Basic, sound arithmetical and subtractional columns are not used, but rather the mind and the eye must jump from one section of the statement to the other. One starts with a figure of $2484.00 on the upper left side of the statement and ends up with $453.09 on the lower right side of the statement. Between the two figures, and in the meantime, the Borrower finds she has somehow "requested and directed" the Lender to disburse money.

The Court now finds that the defendant is liable under 15 U.S.C. § 1640, for failure to disclose information as required under § 1640. The lack of any meaningful sequence to the purported disclosures effectively masks any information which the Act sought to have available to the consumer. The Act is to be liberally construed in favor of the consumer. Thomas v. Myers-Dickson Furniture Co., 479 F.2d 740 (5th Cir. 1973).

Therefore, the plaintiff's motion for summary judgment is granted. The defendant's motion for summary judgment is denied.

15 U.S.C. § 1640(a)(1) directs a statutory award of One Thousand Dollars in this case.

15 U.S.C. § 1640(a)(2), directs the awarding of costs and attorney fees for failure to disclose under the Act and Regulation Z.

The Court now finds that the defendant violated the Truth in Lending Act by actions which are set out above. The Court finds that the plaintiff is a proper person to sue and recover under the act and the facts of this case.

The defendant is liable to the plaintiff for the statutory amount of One Thousand Dollars ($1000.00), costs of this action and reasonable attorney fees.

Ruling on the exact amount of attorney fees to be awarded will be taken under advisement until after the plaintiff has provided the Court, and filed, sufficient documentation so as to allow the Court to compute a reasonable fee.

EXHIBIT A

STATEMENT OF DISCLOSURE
AND LOAN REGISTER

LENDER:
BENEFICIAL FINANCE
INCORPORATED
504 BROADWAY
GARY, INDIANA
1533058 TEL.885 0428
OPEN THURS. TO 8 P.M.

SECURITY The security for this loan is checked below

ALLEN,MR, AURELIUS, DOROTHY
4916 ASTER ST
E HOB, IN 46312

04/02/74 05/02/74 04/02/77 68.00 69.00 36

$ 3404.00 TOTAL OF PAYMENTS
$ 714.42 Prepaid Charges
$ 714.42 FINANCE CHARGE
$ 1769.58 AMOUNT FINANCED
$ 122.74 Disability Ins. Cost
$ 48.44 Life Ins. Cost
$ 111.70
$ NONE
$ 2.00
$ NONE

$ 1332.00 Unpaid Balance Prior Loan
$ 161.96 Prepaid Charges
$ NONE Time Price Differential
$ NONE Other
$ 24.16 Disability Ins. Cost
$ 14.28 Life Ins. Cost
$ 1931.36 Net Balance Prior Loan
01 Nature of Security
23.54 % ANNUAL PERCENTAGE RATE
Default Charge

REBATES

10 Closing Costs Real Estate $
11 To $
12 To $
13 To $
14 To $
Cash or Check Delivered to Borrowers $ 153.09

SECURITY (Land)
Property Other Than Borrowers' Residence
Address City County

DELINQUENCY CHARGE. The Lender may charge and collect a delinquency charge equal to 5% of an installment up to a maximum of $5.00 for any installment if such installment is not paid in full on the tenth day after it is due

REBATES. Upon prepayment of this loan in full prior to the Final Due Date the Lender shall make a rebate to the Borrowers of a portion of the Prepaid Charges computed under the Direct Ratio Refund Method generally known as the Rule of 78ths, as of the next installment due date following the date of prepayment in full. If a Deferral Charge is granted by the Lender and a Deferral Charge is required the Lender also shall refund to the Borrowers that unearned portion of the Deferral Charge applicable to the 10 days next to the unexpired full months of the deferral period. The sum of $1.00 shall be retained as a minimum charge when the earned Prepaid Charges, as a part, amount of loan over $75.00 are less than $1.00. If the Principal Amount of Loan is $75.00 or less, the sum of $3.00 shall be retained when the earned Prepaid Charge are $3.00 or less

Insurance Authorization and Request and Acknowledgement of Receipt of Loan Proceeds and Statement of Disclosure

The undersigned hereby authorize and request the above-identified Lender to arrange for the insurance described below and agree to pay from the proceeds of said loan the applicable cost thereof as set forth above

Group credit disability insurance in amount of the Scheduled Principal Balance against death or disability during the term of said loan (the Benefit ... which after 10 days of disability shall be paid to the first day of disability and shall be paid for each day of disability ... Lender as the ... shall be paid

Single ... group credit life insurance covering ... the ... of the Scheduled Principal Balance or ... the sum of the Principal Balance under ... the ... of such Principal Balance during the term of said loan for the ... and unpaid ... or ... the ... at the date of death, whichever is greater

The actual terms of any such insurance shall be those set forth in the Certificate issued in connection therewith

The undersigned expressly state and agree that this authorization is made voluntarily, and upon any requirement of the Lender or any of the Lender's ... and acknowledge that the taking of such insurance is entirely optional

Initial the appropriate line

I desire Credit Disability Insurance } Date 4/2 1974
I do not want Credit Disab. Insurance } Aurelius J. Allen Jr.

I desire Credit Life Insurance } Date 1974
I do not want Credit Life Insurance } Aurelius J. Allen Jr.

I desire Credit Life Insurance } Date 1974
I do not want Credit Life Insurance } Dorothy C. Allen

The undersigned further acknowledge receipt from the Lender of a written statement setting forth the premium for insurance written against loss of or damage to property ... obtained through the Lender, which insurance is more specifically identified as follows which has the applicable insurance coverage

( ) Household Contents Insurance - Fire, Theft and Extended Coverage
( ) Dwelling Insurance - Fire and Extended Coverage
Automobile Physical Damage Insurance
( ) Fire, Theft and Windstorm Towing Labor Services and Loss of Use
( ) Comprehensive Collision Towing Labor Services and Loss of Use

The undersigned further acknowledge that with reference to each above identified insurance coverage as selected the Lender disclosed the above stated premium for such insurance coverage and that the undersigned had a choice of the person through whom to obtain such insurance coverage

The undersigned hereby confirms that (1) neither the procurement of the household contents insurance nor the selection of a particular agent was required by the Lender (2) the Lender informed the undersigned that such insurance could be obtained from any insurance agent or broker and (3) the undersigned understands that if she has the option of furnishing the same insurance coverage through existing policies of insurance owned or controlled by the undersigned

The undersigned also acknowledge receipt of a Statement of Disclosure as prescribed by the aforesaid Consumer Credit Protection Act of Regulation Z and further agree that the proceeds of loan ... secured on the date shown below and were disbursed in accordance with the undersigned's ... action ... the date shown on the face hereof ... Cash or Check Delivered to Borrowers hereby being ... signed

Aurelius J. Allen Jr.
Borrower
Witness Mickey Smith Date 4/2 1974
Dorothy C. Allen
Co-Borrower

For the Lender named above
By John V. Stefanovic Manager

The undersigned acknowledges receipt of the Statement of Disclosure Copy for Signature of Borrower

Dorothy C. Allen

APPENDIX B

UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT.

No. 75-1637.

DOROTHY ALLEN, *Plaintiff-Appellee,*

v.

BENEFICIAL FINANCE COMPANY OF GARY, INC., *Defendant-Appellant.*

Argued Nov. 6, 1975.

Decided Feb. 9, 1976.

* * * * * * * * * * *

Joseph S. Reid, Hammond, Ind., for defendant-appellant.

Frederick J. Ball, East Chicago, Ind., for plaintiff-appellee.

Before CUMMINGS, ADAMS * and SPRECHER, *Circuit Judges.*

SPRECHER, *Circuit Judge.*

This appeal primarily concerns whether the disclosure statement made in connection with a consumer credit loan by the defendant finance company presented in "meaningful sequence" the disclosures required by Regulation Z, 12 C.F.R. § 226.1 et seq. and the Truth in Lending Act, 15 U.S.C. § 1601 et seq.

I

On April 2, 1974, the plaintiff Dorothy Allen and her ex-husband Mr. Aurelius J. Allen renegotiated a consumer loan from the defendant, Beneficial Finance Company of Gary, Inc. As a result of the renegotiation, Mr. Allen re-

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* Circuit Judge Arlin M. Adams of the United States Court of Appeals for the Third Circuit is sitting by designation.

ceived a check for $453.09, and both Mr. Allen and the plaintiff became liable on a loan for $2,484.00 spread over 36 monthly payments of $69 each. A finance charge of $714.42 was imposed on an amount financed of $1,769.58 leaving an annual percentage rate of 23.54%.

On January 3, 1975, the plaintiff filed the complaint in this action charging, inter alia, that the defendant had not made the required disclosures to her in the credit transaction "in meaningful sequence" as required by Regulation Z. Both parties made motions for summary judgment claiming that there were no material issues of fact left for trial. The trial court granted plaintiff's motion, denied defendant's and awarded plaintiff the statutory penalty of $1,000 and attorney's fees. The court found that the plaintiff signed the note as a "co-borrower" and that by signing the disclosure statement she had acknowledged that she had received a copy of it. The court then went on to find that the disclosures required to be made in the disclosure statement had not been made in a "meaningful sequence." The defendant appeals from that decision.

II

As a preliminary issue, the defendant claims that the trial court made a procedural error in granting the plaintiff's motion for summary judgment without allowing oral argument or the submission of materials in opposition to the motion. The defendant filed its motion for summary judgment on March 4, 1975. The plaintiff's motion was filed six days later on March 10. The trial court entered its Memorandum Opinion and Order on May 1, 1975 over one and a half months later.

Rule 56 of the Federal Rules of Civil Procedure allows a party to move for summary judgment at any time (except that the plaintiff must wait 20 days after the commencement of the action) with or without supporting affi-

davits. Fed.R.Civ.P. 56(a) and (b). The motion must be served at least 10 days prior to the time for hearing. Fed.R.Civ.P. 56(c). This was certainly complied with as more than a month and a half passed between motion and judgment. If the defendant had wished to file any other affidavits or had sought oral argument, it had adequate time to request it. Furthermore, the local rules of the Northern District of Indiana foreclose any argument on the defendant's part. Local Rule 7(b) provides:

> Motions to dismiss, to strike, for judgment on the pleadings, for more definite statement, and for summary judgment shall be accompanied by supporting briefs and proof of service upon opposing counsel of record. An adverse party shall have fifteen (15) days after service of the movant's brief to file an answer brief with proof of service, and the moving party shall have five (5) days after service of the answer brief to file a reply brief with proof of service. Motions for summary judgment may be accompanied by affidavits and exhibits with proof of service thereof upon opposing counsel. An adverse party may file opposing affidavits and exhibits with proof of service within fifteen (15) days after service of the movant's brief in support of a motion for summary judgment. Failure to file timely briefs in support of or in answer to the motions covered in this rule shall subject such motions to summary ruling, *unless any other party who has timely filed a brief requests a hearing which may then be granted in the discretion of the court.* Failure to file a reply brief within the time prescribed shall be deemed a waiver of the right to make such filing.

The defendant failed to request a hearing. Thus, no procedural error was committed.

III

Congress passed the Truth in Lending Act to promote "the informed use of [consumer] credit." 15 U.S.C. § 1601. The Act was designed "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit . . ." *Id.* To accomplish these purposes, Congress set out broad disclosure requirements with which creditors must comply before completing a consumer credit transaction. It entrusted the construction of these broad requirements to the Board of Governors of the Federal Reserve System and gave the Board power to prescribe regulations to carry out the purposes of the Act. 15 U.S.C. § 1604. This was a broad grant of power. Section 1604 provides in part:

> These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

To comply with this mandate, the Federal Reserve Board issued Regulation Z, 12 C.F.R. § 226.1 et seq. The defendant in this case challenges the validity and constitutionality of one provision of Regulation Z and challenges the propriety of the district court's interpretation of that provision. The provision deals with general disclosure requirements. 12 C.F.R. § 226.6(a) provides in part:

> *Disclosures; general rule.* The disclosures required to be given by this part shall be made clearly, conspicuously, *in meaningful sequence,* in accordance with the further requirements of this section, and at the time and in the terminology prescribed in applicable sections. (Emphasis supplied.)

A regulation issued under the broad mandate given here will be sustained so long as it is reasonably related to the purposes of the enabling legislation. *Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356, 369, 93 S.Ct. 1652, 36 L.Ed.2d 318 (1973). The specific section of the underlying Act which supports the challenged provision of the regulation requires creditors to "disclose clearly and conspicuously, in accordance with the regulations of the Board, . . . the information required under this part. . . ." 15 U.S.C. § 1631(a). The Board, through Regulation Z, merely added a meaningful sequence requirement. This addition harmonizes well with both the aim of Congress in achieving "meaningful disclosure of credit terms" and the Act itself. Certainly, if understandable credit disclosure is to be achieved, disclosure statements must use clear language arranged in an order which provides ease of comprehension. This is meaningful sequence.

The Board has given a definitive interpretation to the meaningful sequence requirement only once in Public Position Letter No. 780 (April 10, 1974). The letter reads in part:[1]

> The words "in meaningful sequence" in § 226.6(a) relate to a presentation of required disclosures in a

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[1] For a more complete text of the letter see 4 CCH Consumer Credit Guide ¶ 31,102.

Another public position letter made reference to the meaningful sequence requirement without providing much in the way of a definition. The letter read in part:

> With regard to "meaningful sequence," it was not intended that disclosures must be made in the order in which they are stated in § 226.7(a). However, we believe that it would be a violation of the Regulation, for example, to scatter the disclosure of the various elements of the finance charge throughout the contract or agreement.

Federal Reserve Board Public Position Letter No. 545 (Nov. 4, 1971), reprinted in CCH Consumer Credit Guide ¶ 30,759 (transfer binder).

logical order with respect to those items which have an arithmetical relationship to each other. For example, many of the items called for in § 226.8(b), (c) and (d) are arithmetical and follow each other in logical progression. The remaining items are informative and have no particular interdependence. A meaningful sequence would call for those items which are arithmetically related to appear within a reasonable proximity to each other, not mixed with items which are irrelevant to a progression of arithmetical computations or thought. We realize that it is not always practical to list the items in vertical order, but in keeping with the purpose of the Truth in Lending Act, they should be placed in reasonable proximity to each other so that the customer will not be required to search for any arithmetical items which should logically follow a previous one.

From the Board's interpretation we can conclude that meaningful sequence involves at least two requirements. The first was noted in *Garza* v. *Chicago Health Clubs, Inc.*, 347 F.Supp. 955, 961 (N.D.Ill.1972). There Judge McLaren wrote:

> The statutory purpose of giving the debtor effective notice of the terms and costs of credit is best served if the requirement that disclosures be in "meaningful sequence" is read to mean that those disclosures which are logically related must be grouped together rather than scattered through the contract.

Thus, meaningful sequence first requires groupings of logically related terms. Second, meaningful sequence requires that the terms in these groupings be arranged in a logically sequential order emphasizing the most important terms. The Board means this when it speaks of an "arithmetical progression."

These requirements should not unduly burden creditors who sincerely wish to provide customers with understandable disclosure statements. A clear disclosure statement will naturally fall within the bounds of these requirements. Related terms are normally grouped together to promote clarity. For instance, all those terms which make up the amount financed would normally fall in the same column so that they could be added to arrive at a total amount financed. Similarly, terms that make up the finance charge or the insurance costs would be brought together. Such logical groupings separate different elements of the disclosure statement and should prevent confusion as to the role a term plays. In the same fashion, the natural arrangement for terms in a group is a logically sequential order emphasizing the important terms. In a summation grouping, for instance, the terms making up the sum are placed in a column with the principal terms of the sum at the top and with the total at the bottom. In this way, a person examining the group can easily determine the primary constituents of the sum and can more easily check, if he desires, to see that the total figure is correct. For instance, in the amount financed column, one would expect to find the sum paid out to the borrowers at the top, and, in the case of refinancing a loan, the amount of the prior loan also near the top. These are the principal elements of the amount borrowed and the borrower would expect to find these terms in a prominent position. In all, then, creditors should not find compliance with these requirements burdensome since the requirements describe the order which naturally promotes clarity.

The requirements of meaningful sequence cannot be applied mechanically or rigidly. As the Board notes, "it is not always practical to list the items in vertical order." Nor is it always possible to arrange terms in all the appropriate groupings. However, what must remain foremost in any consideration of the meaningful sequence of a dis-

closure statement is that which lies at the core of the requirements—clarity of disclosure. A creditor must be prepared to explain and justify any departure from the requirements of meaningful sequence.[2] Such justification must relate, not to the creditor's convenience or to conformity to the creditor's accounting methods, but must relate to the purposes of the Act. A creditor must show that a departure from the requirements of meaningful sequence enhances clarity of disclosure, facilitates customer comprehension or is required because of the impracticability of any other arrangement. Although the requirements of meaningful sequence mandate no one arrangement and can be fulfilled in many ways, whatever form is chosen must always reflect the dominant purpose of the Truth in Lending Act.

The present defendant has failed in almost every respect to provide disclosures in meaningful sequence in the present disclosure statement. The court below cited ten instances in which the disclosure statement failed to set forth the required information in a meaningful sequence. (The disclosure statement is attached hereto as an appendix.) Using some of the district court's examples and some of our own, we shall examine the ways in which this statement fails.

First and foremost, the disclosure statement does not group together terms which are logically related. Starting with perhaps the most important group of terms, the terms

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[2] The Board writes in Public Position Letter No. 545 (Nov. 4, 1971), CCH Consumer Credit Guide ¶ 30,759 (transfer binder):

> In view of these general disclosure requirements, it appears to us that disclosures in the agreement or contract are permissible as long as they are clear and conspicuous, and in meaningful sequence. It would seem that there are a multitude of ways by which the creditor could meet these requirements of the Regulation. However, the Regulation does not prescribe precisely how this is to be accomplished; *therefore, it falls upon the creditor to be able to support his belief that his disclosures meet the requirements of the Regulation.* (Emphasis added.)

which make up the amount financed, these are found scattered across the top half of the statement. The total amount financed appears about midway in the first column. Below it are four of the items which make up the total amount financed, the cost of three types of insurance, and the cost of filing fees. None of these four are principal elements of the amount financed. In this case, the principal element is the "net balance-prior loan" of $1,031.56 which the present loan is refinancing. This was placed towards the bottom of the second column. Unless one studies the form and understands the mechanics of these transactions, this term would not appear to be included in the total amount financed. The other principal term, $453.09, the amount disbursed to the borrowers, is shunted over to the bottom of the third column separated by the width of the form from the total amount financed. No reason is apparent for this placement and for the placement of items 10 through 14 above it (which also are included in the amount financed although blank in the present transaction). Certainly, such placement on the form gives no indication that they relate to the total amount financed.

The failure to group together the elements of the amount financed is aggravated by the fact that other terms which are not logically related are grouped together. At the bottom of the second column, four terms, "net balance-prior loan," "nature of security," "annual percentage rate," and "default charge," which have nothing whatsoever to do with one another, fall in as close proximity as possible. The "annual percentage rate" is one of the two most important items of disclosure, yet falling as it does only two lines below "net balance-prior loan," it appears to refer to the prior loan. Certainly, it is quite lost, hidden at the bottom of the second column, between two terms, at least one of which is not even required to be disclosed. Moreover, because these terms are placed in close proximity, they draw attention from other disclosures which are not so closely placed. "Net balance-prior loan" is made to

appear to have some connection with "nature of security," the "annual percentage rate" and a "default charge," when in fact it has no connection whatsoever. This detracts from the fact that it has a connection with the "amount financed" which appears in another column.

Not only does the form fail to relate arithmetically related terms, but it also fails to keep continuity in at least one descriptive disclosure. The court below noted this about the description of the security interest section of the statement. The court wrote:

> One finds the "Security" description starting in the upper right hand corner of the statement with "security (cont.)" in the middle of the page and no connection between the two for continuity or for the mind to connect the two portions of the page in any meaningful sequence.

The only clearly logical grouping of terms concerns the prior loan. Unfortunately, this grouping when contrasted with the terms of the present loan which are not in close proximity, generates confusion as to what terms relate to the present and what to the prior loan. As the court below noted, the terms of the prior loan, since they are all closely related, stand out and can easily be mistaken for terms of the present loan. In all, then, the defendant by failing to place the terms of the disclosure statement in logically related groups has failed to provide the borrower with an understandable and meaningful disclosure statement.

The defendant's form also violates the other requirement of meaningful sequence—that disclosures of related terms be made in a logically sequential order which emphasizes the most important terms. This primarily applies to the defendant's treatment of the elements of the amount financed. To provide greatest clarity these elements should

be arranged in a summation column with the principal terms, the net balance of the refinanced loan and the amount disbursed to the borrowers at the top. The form in no way does this. These two principal terms are found in other columns and the total amount financed is placed above four minor terms in the middle of the first column. Confusion as to what terms of the first column are added to arrive at a total figure is multiplied by the fact that the first column does not contain the complete elements of any sum except the "total of payments," and this sum is confusing because one of its elements, the finance charge, appears twice, first as "precomputed charges" and then as a "finance charge." The need for an arithmetical progression which shows the elements that make up a sum is emphasized by the fact that if the elements of the amount financed on the present form are added, the total is five cents less than the total amount financed.[3] The error is not significant, but it points out the fact that when elements of a sum are not placed in a logically sequential order errors, even substantial errors, can easily be overlooked.

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[3] The elements of the amount financed that the form discloses are as follows:

$1,031.56	Net Balance-Prior Loan
453.09	Amount disbursed to borrowers
122.71	Disability Insurance Cost
48.44	Life Insurance Cost
111.73	Household Contents Insurance Cost
2.00	Filing Fees—UCC Forms
$1,769.53	Total

Whereas: $1,769.58 is the figure disclosed for the Amount Financed. Possibly, the error entered in our reading the figures off the disclosure forms in the record. The forms in the record are not clear, and Beneficial's print-out provides little help since the numbers disclosed more often miss the line than they fall in their proper place.

The defendant tries to justify the layout of its disclosure statement on two grounds.[4] First, the defendant argues that the statement is in subtractional order, starting with the total of payments at the top left and ending, after subtracting out all the other elements, at the bottom right with the amount disbursed to the borrowers. Overlooking the basic flaws with their presentation of the subtractional method,[5] the method itself is a poor one to convey an understanding of the transaction. People do not normally conceive of a loan from a subtractional point of view. They do not start from a total amount of payments and work backwards subtracting a finance charge and other charges so as to arrive at the amount they want to borrow. Borrowers conceive of a loan from exactly the reverse perspective. They have in mind an amount they want to borrow; they want to know how much it will cost in terms of a finance charge; then they add these together (plus other charges) and arrive at their total payments. The subtractional method may make sense to the lender, but not

[4] The defendant's grounds of justification are contained in an affidavit from the author of the disclosure statement. The affidavit was filed after the district court's decision in this case, although adequate time had been allowed prior to the decision for such filings. Therefore, we will not consider the materials in the affidavit as substantive evidence, but only as grounds of argument presented by the defendant in its brief.

[5] How can the defendant argue that the form is laid out in subtractional order when so many terms which should not be subtracted are included in the order? For instance, the finance charge is entered twice—once as "precomputed charges" and next directly beneath it as a "finance charge." Certainly, the finance charge should only be subtracted once from the "total of payments." Moreover, terms such as "nature of security," and "annual percentage rate" which should not be subtracted are included in the order between "net balance-prior loan" and "default charge," terms which should be subtracted. Suffice it to say that the defendant's subtractional order leaves something to be desired.

to the borrower. The disclosure form is for the borrower and must be presented in a conceptual framework a borrower can easily comprehend. The subtractional method does not provide such a framework.

Secondly, the defendant appears to suggest that the form was designed so that it could be used in the national computer system to which the defendant is affiliated. If this is the defendant's contention, it is of little value. The creditor's convenience, whether it be the convenience of a computer or the convenience of a clerk, provides no justification for a departure from meaningful sequence on a disclosure statement. When dealing with computers, we must always bear in mind that they are designed to serve humans, and not the reverse. Certainly, the defendant does not suggest that the computer can not print out on a differently designed form. Whatever the defendant's contention concerning the national computer system is, it has no merit, since if it requires disclosure in this form, the information should be transferred to a proper disclosure form by hand. We doubt, however, that this result is necessary.

The defendant's failure to follow the requirements of meaningful sequence has produced a disclosure form which is unnecessarily confusing. Because of this failure, understandable and meaningful disclosure of credit terms has been prevented. The defendant is liable for having violated the meaningful sequence requirement of Regulation Z, 12 C.F.R. § 226.6(a), and the general disclosure requirement of the Truth in Lending Act, 15 U.S.C. § 1631 (a).

IV

On appeal, the defendant challenges the constitutionality of the meaningful sequence requirement of Regulation Z. However, as the plaintiff points out, this issue was only raised after the trial court's decision in this case. The

defendant's motion for summary judgment made no mention of it. Rule 16 of the Local Rules of Court for the Northern District of Indiana requires notice of an attack upon the constitutionality of an act of Congress. The rule provides in pertinent part:

> *Notice to Court.* Whenever the constitutionality of any act of Congress affecting the public interest is or is intended to be drawn in question in any suit or proceeding to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, counsel for the party raising or intending to raise such constitutional issue shall immediately advise the court in writing, specifying the act or the provisions thereof which are attacked, with proper reference to the title and section of the United States Code if the act is included therein.

Since the defendant failed to properly raise the issue below, we will not consider it on appeal.

V

As a final point, the defendant argues that it is not liable to the plaintiff Mrs. Allen as a co-borrower, because the Act does not require the defendant to make any disclosures to her. The general disclosure requirement of the Act, 15 U.S.C. § 1631, provides in part:

> (a) Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended, the information required under this part or part D of this subchapter.
>
> (b) If there is more than one obligor, a creditor need not furnish a statement of information required under this part or part D of this subchapter to more than one of them.

The plaintiff as a co-borrower[6] was a "person to whom consumer credit [was] extended," and, therefore, the defendant under subparagraph (a) has a duty to disclose to her. The question which the defendant poses is whether subparagraph (b) eliminates that duty as to a joint obligor. The defendant would have us equate "a statement of information" in subparagraph (b) with the general disclosure requirement of subparagraph (a) and argues that since it need not have disclosed to the plaintiff under subparagraph (b), it violated no duty to her and therefore is not liable.

The flaw in this reasoning is twofold. First, the reasoning assumes that Congress intended that subparagraph (b) limit the general disclosure requirement of subparagraph (a). There is little to support this assumption. Congress could have assumed that even though a creditor need provide only one disclosure statement, he would disclose to all obligors the information required. Certainly, multiple obligors are expected to look at and rely upon the one statement given.[7]

Secondly, even if the creditor need only disclose to one of multiple obligors, this does not limit the right of other obligors to recover if disclosure to the one has been faulty.

---

[6] The court found the plaintiff was a co-maker or co-borrower in the transaction.

[7] The court in *Rivers* v. *Southern Discount Company Atlanta II*, 4 CCH Consumer Credit Guide ¶ 98,796 at 88,450 (N.D.Ga. 1973) wrote:

> The Act contemplates, in this Court's opinion, that each borrower is entitled to know the cost of his or her credit prior to signing. Though the Act does require that the creditor furnish only one *correct* copy of the disclosure statement to one borrower, it is contemplated that all borrowers will be able to view that document if they wish in order to glean the required information. If that one copy is incorrect, as in the case at Bar, then each borrower is deceived and each suffers damage.

Congress could have expected all obligors to be protected by proper disclosure to only one in that the one who received disclosure would certainly take the best credit terms available. Faulty disclosure, however, would destroy this protection. Certainly, the other obligors would be as harmed as the one who received the faulty disclosure.

Congress appears to have included subparagraph (b) merely to facilitate compliance with the Act. As the House Report states:

> In order to reduce needless paperwork, disclosure need only be made to one obligor. For example, if two people (e.g. a husband and wife) are the obligors, only one copy of the contract with the required disclosure information would need to be furnished.

H.R.Rep.No.1040, 90th Cong., 1st Sess. (1967) (to accompany H.R. 11601). 1968 U.S. Code Cong. & Admin. News 1962, 1984.[8]

Above all, however, the wording of subparagraph (b) provides the best clue to Congress' intent. Congress did not say disclosure need only be given to one of multiple obligors. Nor did it say that recovery may only be had by one. It said a "statement of information" need only be furnished to one of multiple obligors. From all this we can conclude that Congress by including subparagraph (b) meant only to reduce the burden of paperwork on the creditor, and did not mean to foreclose any right of recovery by a joint obligor.

---

[8] Because this description of subparagraph (b) is set out in the Report under "Methods of Disclosure" instead of a section on disclosure requirements, the emphasis must be placed on the idea of facilitating compliance by reducing paperwork as opposed to reducing disclosure requirements.

No other provision in the Act in any way implies a limitation on the right of a joint obligor to recover under the Act. The language of the civil liability section is clear:

> (a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part or part D of this subchapter *with respect to any person is liable to such person in an amount equal to the sum of*—
>
> (1) any actual damage sustained by such person as a result of the failure;
>
> (2) (A) in the case of an individual action twice the amount of any finance charge in connection with the transaction, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000;
>
> * * * * * * * * * *
>
> (3) in the case of any successful action to enforce the foregoing liability the costs of the action, together with a reasonable attorney's fee as determined by the court.

15 U.S.C. § 1640. The defendant Beneficial has failed to provide a meaningful disclosure statement in the transaction in which Mrs. Allen was a joint obligor. As a result, it is liable to Mrs. Allen for $1,000 (that being less than twice the finance charge) plus reasonable attorney's fees to be set by the district court.

Affirmed.

STATEMENT OF DISCLOSURE AND LOAN REGISTER

As shown hereon, the amount shown below as the Total of Payments, which is the Amount Financed plus the Finance Charge, is payable in successive monthly instalments of principal and charges combined. The Number of instalments and the amounts of the 1st instalment and the Other instalments are set forth below. The first of said instalments is payable on the 1st Due Date shown below and each subsequent instalment on the same day of each succeeding month thereafter, the final instalment being due and payable on the Final Due Date shown below. The sum of the instalments is shown below as the TOTAL OF PAYMENTS.

LENDER:

BENEFICIAL FINANCE Co.
INCORPORATED
504 BROADWAY
GARY, INDIANA
2533058 TEL.885 0422.
OPEN THUR 9 A.M. 8 P.M.

SECURITY: The security for this loan is checked below:

Security Agreement dated 4/3/74
on ☐ Furniture Yr. Make
on ☐ Auto
☐ Accommod Maker ☐ Real Estate Mortgage
INSURANCE IS INCLUDED IF COST OR PREMIUM IS INSERTED TO THE LEFT HEREON.

If the box alongside the word "Furniture" is checked, the Security Agreement identified by the date shown hereon covers all of the consumer goods of every kind then owned or thereafter acquired by the Borrowers in replacement thereof and then or thereafter located at the Borrowers' place of residence set forth hereon. Such Security Agreement secures future advances or loans made by Lender to Borrowers, at Lender's option, within eight years of the date of such Security Agreement.

Account No.	Type	Sequential Number
21435352	26	26,16520.9

Name & Mailing Address of Borrower(s): ALLEN, MR. AURELIUS, DOROTHY
6916 ASTOR ST
[redacted] IN 46312

Spouse:

Residence Address ← if not the same:

Date of Loan	1st Due Date	Final Due Date	1st Instal. $	Otherinstal $	Payable in	Monthly Installments
04/02/74	05/02/74	04/02/77	69.00	69.00	35	

$ 2436.00	TOTAL OF PAYMENTS	$ 1232.00	Unpaid Balance - Prior Loan
$ 714.42	Precomputed Charges	$ 161.93	Precomputed Charges
		$ NONE	Time Price Differential
$ 714.42	FINANCE CHARGE	$ NONE	Other
1. 1739.56	AMOUNT FINANCED	$ 24.15	Disability Ins. Cost
2. 122.71	Disability Ins. Cost	$ 14.30	Life Ins. Cost
3. 43.41	Life Ins. Cost		
4. 111.73	HsHld. Conts. Ins. Prem.		
5. NONE	Dwelling Ins. Prem.		
6. NONE	Auto. Phys. Dam. Ins. Prem.		
7. NONE		2 1031.56	Net Balance - Prior Loan
		01	Nature of Security
8. 2.00	Filing Fees-UCC Forms	23.54	% ANNUAL PERCENTAGE RATE
9. NONE	Certificate of Title Fees	$	Default Charge

REBATES

At the direction and request of the Borrowers, on their behalf and for their benefit, the Lender has disbursed, from the Amount Financed, the proceeds of loan for items 2 through 9 shown to the left hereof and for those items shown below as follows:

10. Closing Costs-Real Estate	$
11. To:	$
12. To:	$
13. To:	$
14. To:	$
Cash or Check Delivered to Borrowers (Line 1 less sum of lines 2 through 14)	$ 453.09

SECURITY (cont.)

If the box opposite the description "Real Estate Mortgage" in said Security section is checked, this loan is secured by a mortgage on real property owned by the Borrowers which is the Borrowers' place of residence shown unless otherwise identified below.

Property Other Than Borrowers' Residence

Address _____ City _____ County _____

DELINQUENCY CHARGE: The Lender may charge and collect a delinquency charge equal to 5% of an instalment, up to a maximum of $5.00 for any instalment, if such instalment is not paid in full on the tenth day after it is due.

REBATES. Upon prepayment of this loan in full prior to the Final Due Date, the Lender shall make a rebate to the Borrowers of a portion of the Precomputed Charges calculated under the Direct Ratio Refund Method, generally known as the Rule of 78ths, as at the next instalment due date following the date of prepayment in full. If a deferral is granted by the Lender and a Deferral Charge is incurred, the Lender also shall refund to the Borrowers the unearned portion of the Deferral Charge applicable on a pro-rata basis to the unexpired full months of the deferral period. The sum of $7.50 shall be retained as a minimum charge when the earned Precomputed Charges on a Principal Amount of Loan over $75.00 are less than $7.50. If the Principal Amount of Loan is $75.00 or less, the sum of $5.00 shall be retained when the earned Precomputed Charges are $5.00 or less.

Insurance Authorization and Request and Acknowledgement of Receipt of Loan Proceeds and Statement of Disclosure

The undersigned hereby authorize and request the above identified Lender to arrange for the insurance described below and agree to pay from the proceeds of said loan the identifiable cost thereof as set forth above.

Group credit disability insurance, insuring the designated Principal Borrower against disability during the term of said loan, the benefits of which after 14 days of disability shall be retroactive to the first day of disability and shall be equal for each day of disability to 1/30th of the monthly instalment on said loan.

Reducing term group credit life insurance insuring ☐ the life of the designated Principal Borrower or ☐ the lives of the Principal Borrower and the spouse of such Principal Borrower during the term of said loan for the scheduled unpaid balance of the loan at the date of death, or the net unpaid balance at the date of death, whichever is greater.

The actual terms of any such insurance shall be those set forth in the Certificate issued in connection therewith.

The undersigned expressly state and agree that this authorization is made voluntarily, not upon any requirement of the Lender or any of the Lender's employees, and acknowledge that the taking of such insurance is entirely optional.

Initial the appropriate box

☒ I desire Credit Disability Insurance
☐ I do not want Credit Disab. Insurance
} Date 4/3, 19 74
x Aurelius Allen Jr.
(SIGNATURE OF PRINCIPAL BORROWER)

☒ I desire Credit Life Insurance
☐ I do not want Credit Life Insurance
} Date 4/3, 19 74
x Aurelius Allen Jr.
(SIGNATURE OF PRINCIPAL BORROWER)

☐ I desire Credit Life Insurance
☒ I do not want Credit Life Insurance
} Date 4/3, 19 74
x Dorothy C. Allen
(SIGNATURE OF SPOUSE)

The undersigned further acknowledge receipt from the Lender of a written statement setting forth the premium for insurance written against loss of or damage to property or obtained through the Lender, which insurance is more specifically identified as follows (check box for applicable insurance coverage):

☐ *Household Contents Insurance — Fire, Theft and Extended Coverage*
☐ *Dwelling Insurance — Fire and Extended Coverage*

Automobile Physical Damage Insurance

☐ *Fire, Theft and Windstorm — Towing, Labor Services and Loss of Use.*
☐ *Comprehensive — Collision — Towing, Labor Services and Loss of Use.*

The undersigned further acknowledge that with reference to such above identified insurance coverage so selected, the Lender disclosed the above stated premium for such insurance coverage and, that the undersigned had a choice of the person through which to obtain such insurance coverage.

The undersigned hereby confirms that (1) neither the procurement of the household contents insurance nor the selection of a particular agent was required by the Lender, (2) the Lender informed the undersigned that such insurance could be obtained from any insurance agent or broker and (3) the undersigned understands that it also has the option of furnishing the same insurance coverage through existing policies of insurance owned or controlled by the undersigned.

The undersigned also acknowledge receipt of a Statement of Disclosure as prescribed by the aforesaid Consumer Credit Protection Act of Regulation Z and further agree that the proceeds of loan were received on the date shown below and were disbursed, in accordance with the undersigned's authorization, for the items shown in the box to the right hereof, receipt of the item designated "Cash or Check Delivered to Borrowers" hereby being acknowledged.

x Aurelius Allen Jr.
Principal Borrower

Witness Russell Smith Date 4/3, 19 74

x Dorothy C. Allen
Co-Borrower

For the Lender named above.

By John H. Stephenson Manager

The undersigned acknowledges receipt of the Statement of Disclosure — Copy for Spouse of Borrower.

x Dorothy C. Allen
(Spouse of Borrower)

APPENDIX C

Opinion by Judge Sprecher

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

February 9, 1976

Before

Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. ARLIN M. ADAMS, *Circuit Judge* *
Hon. ROBERT A. SPRECHER, *Circuit Judge*

DOROTHY ALLEN, *Plaintiff-Appellee,*

No. 75-1637

vs.

BENEFICIAL FINANCE COMPANY OF GARY, INC.,
Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Indiana
Hammond Division

No. Civ. 75-2 H

Allen Sharp, Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Indiana, Hammond Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this date.

---

* Circuit Judge Arlin M. Adams of the United States Court of Appeals for the Third Circuit is sitting by designation.

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

May 11, 1976

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*
Hon. LUTHER M. SWYGERT, *Circuit Judge*
Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. WILBUR F. PELL, JR., *Circuit Judge*
Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. PHILIP W. TONE, *Circuit Judge*
Hon. WILLIAM J. BAUER, *Circuit Judge*

DOROTHY ALLEN, *Plaintiff-Appellee,*

No. 75-1637

vs.

BENEFICIAL FINANCE COMPANY OF GARY, INC.,
Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Indiana, Hammond Division

Civil No. 75-2-C

ALLEN SHARP, *Judge.*

On consideration of the suggestion for rehearing *en banc* filed in the above-entitled cause, a vote on the suggestion having been called for, and a majority of the active members of the court having voted to deny the rehearing *en banc,*

IT IS ORDERED that the suggestion for rehearing *en banc* be, and the same is hereby, DENIED.

Judge Pell would rehear the appeal *en banc.*

On consideration of the petition for rehearing in the above-entitled cause, the panel having voted to deny rehearing,

IT IS ORDERED that the petition for rehearing in the above-entitled appeal be, and the same is hereby, DENIED.

APPENDIX E

EXHIBIT E

DISCLOSURE STATEMENT OF LOAN

BORROWERS (NAMES AND ADDRESSES): LENDER: LOAN NO._____ Date_____

_____ _____ (STREET ADDRESS)

_____ _____ (CITY) (STATE) (ZIP)

TOTAL OF PAYMENTS	FINANCE CHARGE	AMOUNT FINANCED	ANNUAL PERCENTAGE RATE:	CREDIT LIFE INSURANCE CHARGE	DISABILITY INSURANCE CHARGE	PROPERTY INSURANCE CHARGE
$	$	$	%	$	$	$

PAYABLE IN: CONSECUTIVE MONTHLY INSTALLMENTS	DUE DATE OF PAYMENTS			AMOUNT OF PAYMENTS			
	FIRST:	OTHERS: SAME DAY OF EACH MONTH	FINAL:	FIRST:	OTHERS:	FINAL:	RECORDING FEE
				$	$	$	$

INSURANCE

PROPERTY INSURANCE. If written in connection with this loan, may be obtained by borrower through any person of his choice. If borrower desires property insurance to be obtained through the creditor, the cost will be $_____ for the term of the credit.

CREDIT LIFE AND DISABILITY INSURANCE is not required to obtain this loan. No charge is made for credit insurance and no credit insurance is provided unless the borrower signs the appropriate statement below:

(a) The cost for Credit Life Insurance alone will be $_____ for the term of the credit.

(b) The cost for Credit Life and Disability Insurance will be $_____ for the term of the credit.

I desire Credit Life and Disability Insurance.		I desire Credit Life Insurance only.		I DO NOT want Credit Life or Disability Insurance.	
(Date)	(Signature)	(Date)	(Signature)	(Date)	(Signature)

REBATE FOR PREPAYMENT IN FULL. If the loan contract is prepaid in full by cash, a new loan, refinancing or otherwise before the final installment date, the borrower shall receive a rebate of precomputed interest computed under the Rule of 78's.

DEFAULT CHARGE. [The creditor should set forth the amount, or method of computing the amount, of any default, delinquency, or similar charges payable in the event of late payments.]

SECURITY

DESCRIPTION

A. ☐ This Loan is Secured By a Security Agreement of Even Date covering.....

The Security Agreement will secure future or other indebtedness and will cover after-acquired property.

☐ Motor Vehicle(s): Make ..... Serial No: .....

☐ Household Goods & Appliances of the following description:.....

.....

.....

.....

☐ Other: (Describe) .....

B. ☐ This Loan is Unsecured.

I ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Borrower: .....

Witness: .....

This form, when properly completed, will show how a creditor may comply with the disclosure requirements of the provisions of paragraphs (b) and (c) of §226.7 of Regulation Z for the type of credit extended in this example. This form is intended solely for purposes of demonstration and it is not the only format which will permit a creditor to comply with disclosure requirements of Regulation Z.

APPENDIX F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

OFFICE OF
SAVER AND CONSUMER AFFAIRS

May 20, 1976

Mr. Robert C. Finot
Law Department
American Investment Company
and Subsidiaries
8301 Maryland Avenue
Saint Louis, Missouri 63105

Dear Mr. Finot:

This is in response to your letter of March 3, requesting staff's interpretation of the term "meaningful sequence" as used in § 226.6(a) of Regulation Z.

In the recent case of *Allen* v. *Beneficial of Gary, Inc.* (4 CCH CCG ¶ 98,477), the court quoted from staff's Public Information Letter 780, dated April 10, 1974, in considering whether a particular set of disclosures was made in meaningful sequence as required by the Regulation. That staff letter states that "meaningful sequence" requires that those prescribed disclosures which have some arithmetical relationship to each other be presented in a logical order or progression. The *Allen* decision has been interpreted by some to mean that the various disclosure elements must be arranged in a "summation column," as opposed to a subtractional order, in order to comply with the requirement for a meaningful sequence.

Neither § 226.6(a) nor Public Information Letter 780 sets forth any particular "arithmetical progression" which must be used in making disclosures. In staff's opinion, the Regulation does not require all presentations to be made within the rigid confines of some particular series of additions or subtractions. In fact, we believe it is not really

appropriate to speak of a "summation" or "subtractional" method as though these were two separate and mutually exclusive types of disclosures. In order to comply with the requirements of § 226.8, most disclosure statements would necessarily involve both additions and subtractions of various items. For example, a disclosure beginning with the total of payments, which some might characterize as a subtractional method, would probably involve an addition process in disclosing an amount financed which includes other charges or a finance charge composed of more than one component. In contrast, a disclosure beginning from the amount of loan proceeds, which would apparently be considered a summation method, would require a series of subtractions if the transaction involved a prepaid finance charge and/or a required deposit balance. We believe that the invalidity of attempting to categorize disclosure methods in this way may be illustrated by the provisions of § 226.8(c). The series of disclosure items outlined in that section involve a mixture of subtractions and additions which cannot, in our view, be described with some particular arithmetical label.

In staff's view, "meaningful sequence" cannot—and should not—be defined by reference to some rigid concept of arithmetical progression. Since a primary purpose of this requirement and of the Truth in Lending Act as a whole is to adequately inform consumers of the terms and costs of credit, we believe that § 226.6(a) requires that related terms be presented in an order which will assist the customer in understanding their relationship. Given the wide variety in credit transactions, "meaningful sequence" must be determined by reference to the particular set of disclosures under consideration. An arrangement of elements which is suitable for one type of transaction may not necessarily be adequate for another type of transaction. So long as the placement makes clear the relationship among the various disclosure terms, a disclosure statement may still be in compliance with § 226.6(a) even though the

terms are placed in a horizontal (see Exhibit E in the Board's earlier Regulation Z pamphlet) rather than a vertical order or in a descending rather than ascending progression.

We trust this is responsive to your inquiry.

Sincerely,

/s/ JERAULD C. KLUCKMAN
Jerauld C. Kluckman
Assistant Director

Supreme Court, U. S.
FILED
SEP 7 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-182

BENEFICIAL FINANCE COMPANY OF GARY, INC.,
Petitioner,

vs.

DOROTHY ALLEN,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

GIVEN DAWSON & CAPPAS,
MARSHALL J. GOLDSMITH,
3926 Main Street,
East Chicago, Indiana,
(219) 398-6200,
Attorneys for Respondent.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-182

BENEFICIAL FINANCE COMPANY OF GARY, INC.,
Petitioner,

vs.

DOROTHY ALLEN,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Pursuant to Rule 40(3) of the Rules of The Supreme Court of the United States, respondent is satisfied with petitioner's statements concerning Opinions Below and Jurisdiction found on pages one and two of its Petition.

QUESTION PRESENTED.

Whether this Court should exercise its judicial discretion to review the lower courts' conclusions of law and findings of fact that petitioner's consumer loan disclosure statement is not in "meaningful sequence" as required by the Truth-In-Lending Act.

STATUTES AND REGULATIONS INVOLVED.

In addition to the Statutes and Regulations cited by petitioner at pages two and three of its petition, additional authorities are pertinent to this Court's determination of whether "special and important reasons" exist for the granting of Certiorari.

The Congressional purpose of the Truth-In-Lending Act (Act), and Regulation Z promulgated thereunder, is found at 15 U. S. C. § 1601.

> "The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."

Pertinent regulations promulgated by the Federal Reserve Board (FRB) through Regulation Z which will assist this Court's judgment are:

Regulation Z, § 226.6(b) (Inconsistent State Requirements) and (c) (additional information).

> (b) "With respect to disclosures required by this Part, state law is inconsistent with the requirements of the Act and this Part . . . to the extent that it
>
> "(1) Requires a creditor to make disclosures different from the requirements of this Part with respect to form, content, terminology, or time of delivery;"
>
> (c) "at the creditor's option, additional information or explanations may be supplied with any disclosure required by this Part, but none shall be stated, utilized, or placed so as to mislead or confuse the customer or contradict obscure, or detract attention from the information required by this Part to be disclosed. Any creditor who elects to make disclosures specified in any provision of State law which, under paragraph (b), of this section, is inconsistent with the requirements of the Act and this Part may
>
> "(2) Make such inconsistent disclosures on the statement on which disclosures required by this Part are made; provided:
>
> "(iii) All inconsistent disclosures appear separately and below a conspicuous demarcation line, and are identified by a clear and conspicuous heading indicating that the statements made thereafter are inconsistent with the disclosure requirements of the Federal Truth in Lending Act."

Certain Indiana statutes raised in issue by petitioner's petition are relevant to the question presented.

Indiana Code, I. C. 1971, 24-4.5-3-107 (a) defines a precomputed loan as:

> "A loan . . . is 'precomputed' if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance."

Indiana Code, I. C. 1971, 24-4.5-3-301 (2) (3) states:

> "The lender shall disclose to the debtor to whom credit is extended with respect to a consumer loan the information required by either this part, *or* the Federal Consumer Credit Protection Act." (Respondent's emphasis).

Indiana Code, I. C. 1971, 24-4.5-3-302 (c) states that a lender:

> "May use terminology different from that employed in this Part if it conveys substantially the same meaning."

STATEMENT OF THE CASE.

Respondent brought suit against the petitioner and alleged numerous violations of the Act and Regulation Z in its loan disclosure statement. The only allegation reached by the trial court, only one violation was required, was that petitioner's consumer loan statement was not in "meaningful sequence."

Therefore, the nature of this case deals with the absence of clarity of disclosures, not the absence of disclosures required by the Act or Regulation.

Essentially, petitioner's Statement of the Case outlines the loan disclosure statement found on pages 24a and 25a of its Appendix. Respondent shall discuss the contents of the disclosure statement and petitioner's Statement of the Case and comments thereon in its argument as to why Certiorari should not be granted to petitioner. First, the factual argument will be set against the current posture of the law on the Truth in Lending Act.

Initially, though, a correction of the petitioner's Statement of the Case is required. The underlying obligation giving rise to this action concerned a $1,769.58 loan, not a $1,750.00 loan as noted by petitioner. The total of 36 monthly payments of $69.00 each is $2,484.00.

The Writ Should Be Denied, the Disclosure Statement, Under the Current State of Law, Is Totally Deficient.

The purpose of the Act is to ensure "the informed use of credit" through "meaningful disclosure of credit terms". "Awareness" is the keynote of the Act. 15 U. S. C. § 1601.

> "The Truth in Lending reflects a transition in congressional policy from a philosophy of 'Let the buyer beware' to one of 'Let the seller disclose'. By erecting a barrier between the seller and the prospective purchaser in the form of hard facts, Congress expressly sought to . . . avoid the uninformed use of credit. 15 U .S C. § 1601." *Mourning* v. *Family Publication Service, Inc.*, 411 U. S. 356, 93 S. Ct. 1652, 1664, 36 L. Ed. 2d 318 (1973).

The need for Congressional protection through such requirements as in issue in the case at bar, "meaningful sequence", was necessitated by lender practices which at times bordered on fraud. *Mourning* v. *Family Publication Service, Inc.*, 411 U. S. 356, 377, 93 S. Ct. 1652, 1664-1665, noted at the time

credit was extended computations about the cost of credit were "often not encouraged by the solicitor or performed by the purchaser". Hence, the need for clarity, information and "meaningful disclosures" of credit terms. The consumer must be protected.

Lower courts have interpreted the Act as a remedial statute to be strictly enforced, *Powers* v. *Sims & Lewis Realtors*, 396 F. Supp. 12 (D. C. Va. 1975), and liberally construed, *Johnson* v. *McCracklin Sturm Ford, Inc.*, 527 F. 2d 257 (3rd Cir. 1975).

The necessity of assumptions on the part of the consumer were meant to be eliminated if the Act was to fulfill its worthy purpose. *Pennino* v. *Morris Kirschan & Co. Inc.*, 526 F. 2d 367 (5th Cir. 1976).

Set against the Congressional purpose and court interpretations, the lower courts found petitioner's disclosure statement severely wanting. Were no Court interpretations existing with only the statutory purpose to guide the courts, the factual content of the disclosure statement itself is sufficient reason for not granting Certiorari.

The Writ Should Be Denied, the Loan Disclosure Statement Is Not in "Meaningful Sequence".

Petitioner has outlined the general content of its disclosure statement in its Statement of the Case. Below respondent will respond and highlight just a few illustrations of how poorly the content of the disclosure statement fails to fulfill the policy of "awareness" of the credit terms, which is in sharp contrast to petitioner's seemingly logical presentation. However, a review of the disclosure statement by this Court is respondent's best argument of why the Appellate and District Courts rejected the statement as being in meaningful sequence.

The Appellate Court utilized Federal Reserve Board (FRB) Public Position Letter No. 780, April 10, 1974, as a guideline

in its determination of the phrase "meaningful sequence". See, page 11a of petitioner's Appendix. From that Letter, the Appellate Court deciphered two elements of "meaningful sequence".

> "Thus, meaningful sequence first requires groupings of logically related terms. Second, meaningful sequence requires that the terms in these groupings be arranged in a logically sequential order emphasizing the most important terms. The Board means this when it speaks of an 'arithmetical progression'." See, page 12a of petitioner's Appendix.

Therefore, contrary to petitioner's assertion, the Appellate Court gave great deference to the FRB's interpretation of meaningful sequence. No conflict exists between the Seventh Circuit and FRB interpretations.

FRB Letter No. 780 also stated, aptly important here as will be shown below, that the lender should place disclosure items:

> ". . . in reasonable proximity to each other so that the customer will not be required to search for any arithmetical items which should logically follow a previous one."

Given the requirements of logical groupings and logical sequential order the following is found in petitioner's disclosure statement.

First, the Appellate Court found no continuity in the descriptive disclosure regarding security of the loan. "Nature of Security" is found in a middle column of the page between "Net balance-Prior Loan" and "Annual Percentage Rate". That column deals with a prior loan, not the present loan in question that the consumers are interested in. It seems logical that the nature of security of the present loan be in a grouping with the current, not past, loan.

To determine what security the consumer is putting up he is told that it is "01". "01" is not explained anywhere on the disclosure statement. This is no wonder since petitioner tells us that "01" is *"A code number, intended primarily for internal use and not for disclosure to the borrower . . . the nature of*

the security is disclosed to the borrower *at another place* on the form". Page 5, footnote 2 of the petitioner's petition. (Respondent's emphasis).

Since the code number "01" is for the lender's benefit and tells the consumer nothing it has no business in the statement at all and is expressly prohibited by Regulation Z, § 226.6 (c) above.

To determine the nature of his security a consumer must go from the middle of the page to the upper right hand box labelled "Security", which may or may not be the same thing as "Nature of Security". The consumer finds his "furniture" is to be security. Yet, to be sure, he must read the fine print outside and below the box to discover that all future "consumer goods" at his residence are encumbered. That is, if the consumer discovers and reads print which is not in the box labelled "security" in the first place.

The consumer will also find that "security" is continued from the upper right hand side of the page to the lower, middle-left of the page. Here "Security" is "(Cont.)".

None of this meets the FRB requirements of logical groupings, logical sequence and the prohibition against "searching" for related items.

Second, petitioner tells us that "precomputed charges" and "finance charge" ($714.42) in the left-hand column of the page are "equivalents". Page 4, footnote 1, petitioner's petition. Given petitioner's contention of a subtractional loan format, one does not subtract the equivalent figures of $714.42 twice. See, page 18a of petitioner's Appendix for Appellate Court comments.

Further, Indiana does not require the term "precomputed charges" to be used on any disclosure statement. See above, I. C. 1971, 24-4.5-3-107(a). Indiana does allow "finance charge" phraseology to be used in place of "precomputed charges" if they convey the same meaning which petitioner claims they do. See above, I. C. 1971, 24-4.5-3-302(c). There-

fore, such additional information is excess baggage positioned in a place where it is expressly prohibited. Such gratuitous information is in violation of Regulation Z, § 226.6(b) and (c), above.

Parenthetically, since it is mentioned in petitioner's petition, it should be noted that Indiana defines a "precomputed loan" as principal plus finance charge, I. C. 1971, 24-4.5-3-107(a), above, and not just as a "finance charge" as petitioner asserts. That terminology is not only technically incorrect, but again out of place. Indiana specifically defers its statutory disclosure terminology to that used in the Act. I. C. 1971, 24-4.5-3-301(2)(3), above. Further, to be internally consistent "finance charge" in the statement should be found in both the present and prior loan columns, but is not.

Third, an important Act requirement, the "Annual Percentage Rate" (APR) is hidden in a column treating rebates of a prior loan, center of the page, not the current loan transaction. It seems obvious that a consumer could easily relate the APR to the "Net Balance-Prior Loan" directly above it, rather than to the present "Amount Financed", $1,769.58, in another column, to the left and several lines up. The APR as presently located between "Net Balance-Prior Loan" and "Default Charge" has no logical relationship to those items.

Fourth, the Appellate Court applied FRB Letter No. 780 to the sequence of lines that are numbered, not all lines being numbered. Letter 780 requires that "arithmetical items which should logically follow a previous one" be placed "in reasonable proximity to each other so that the customer will not be required to search for the items." This is just common sense.

Yet, in the left hand column of the disclosure statement treating the present loan line 1 is followed by line 3. Line 2 is over in a middle column treating a prior loan.

Lines 3 through 9 are on the left hand side of the statement with lines 10 through 14 across the page on the right hand side. The eye and mind must search for the relationships between the numbered lines.

Fifth, petitioner continually asserts its disclosure statement as one in a "subtractional format". The Appellate Court has noted the lack of internal consistency of that contention at footnote 5 of its Opinion, page 18a of petitioner's Appendix. In addition, in the introduction of Statement of Disclosure one finds "the *sum* of the installments" (Respondent emphasis). Before the consumer reaches the figures he is supposed to subtract he is conditioned to add.

To determine the amount of money the consumer takes away with him, "cash or check delivered to borrowers," he must add, *i.e.* "Line 1 less *sum* of lines 2 through 14" (Respondent's emphasis). If there is a "subtractional format" as maintained by petitioner at page 6 of its petition, there is instead evidence at two locations of an additional format.

Finally, if as petitioner maintains, the net balance of a refinanced loan and the amount of the proceeds of that loan are figures not required to be disclosed by Regulation Z, page 13 of petitioner's petition, then such disclosures are in violation of Regulation Z, § 226.6(c)(2)(iii), above.

Based upon the above facts, matters related to this Court in petitioner's petition, and the lower Courts' opinions, certiorari should be denied. It should be denied because the Appellate and District Courts are correct in their rejection of "meaningful sequence" in this disclosure statement.

The Writ Should Be Denied, the Appellate Court Has Not Found the Substraction Format per se Illegal.

Both petitioner and *Amicus* contend that in the Seventh Circuit the use of a subtractional format in a loan disclosure statement is *per se* illegal. Such is not the case.

The Appellate Court stated, page 19a of petitioner's Appendix:

> "The disclosure form is for the borrower and must be presented in a conceptual framework so a borrower can easily comprehend. The subtractional method does not provide such a framework."

That statement is the basis of their contention. However, the Court is clearly limiting its holding to the narrow facts of this case. The Seventh Court does not require an additional format as opposed to a subtractional format. The Court stated, page 14a, of petitioner's Appendix:

> "Although *the requirements of meaningful sequence mandate no one arrangement and can be fulfilled in many ways,* whatever form is chosen must always reflect the dominant purpose of the Truth in Lending Act." (Respondent's emphasis.)

At page 13a of petitioner's Appendix the Court stated:

> "The requirements of meaningful sequence cannot be applied mechanically or rigidly."

At page 14a of petitioner's Appendix, the Court quotes from FRB Letter No. 545, November 4, 1971, CCH Consumer Credit Guide, Paragraph 30, 759 (transfer binder):

> "It would seem that there are a multitude of ways by which the creditor could meet the requirements of the Regulation."

The Seventh Circuit is not in conflict with any other reported decision on meaningful sequence, FRB position letter or other authority. A recent FRB letter cited at page 29a of petitioner's Appendix is not in conflict with the Seventh Circuit's decision. If one wishes to read the letter as "temperately but unmistakably" correcting the Court of Appeals, so be it. Yet, the letter clearly states that only "some" entities have interpreted *Allen* so restrictively as petitioner and *Amicus* do. The letter found on page 29a of the Appendix does not reject the *Allen* decision on *its facts.*

The FRB form noted at page 28a of petitioner's Appendix may be in a subtractional format, an issue that is a debatable fact, but it is clearer than petitioner's statement. And it is petitioner's statement that has been found wanting, not the FRB's.

The fact that other financial institutions use a subtractional format is irrelevant. The arguments above apply to these entities as

well. They have nothing to concern themselves over if *Allen,* as the FRB letter on page 29a implicitly does, is read restrictively within the facts of the case at bar.

Certiorari should be denied because no important question is at issue with regard to use of a subtractional format in disclosure statements.

The Writ Should Be Denied, Speculation of Future Suits or Damages Is Not a Factor Requiring Review.

Petitioner, and *Amicus,* contend that if the matter of whether or not the subtraction format is illegal is not "settled" petitioner and other financial institutions will be subjected to numerous and debilitating actions at law. Such an argument is pure speculation and is not a ground for review by Certiorari.

As shown above, the Seventh Circuit has not "condemned" the subtractional format. It has found this particular subtractional format in question as severely wanting. No rigid, mechanical application is mandated.

Though other finance companies may or may not use the subtractional format their disclosure statements are not at issue. If their format is anything like petitioner's, then indeed they must be worried and be required to put their disclosures in meaningful sequence. A subtractional format does not *per se* invoke liability.

If some potential plaintiff does bring a class action against petitioner damages and a statute of limits of one year severely limit petitioner's exposure to the lesser of $100,000 or 1 percent of the company's net worth with one year of the date of the transaction. 15 U. S. C. § 1640. Such an action is a bar to all other possible actions.

It should be noted that petitioner exacts from its subsidiaries a uniform method of doing business with centrally prepared and pre-printed forms. Such centralized authority will result in a uniform impact from the *Allen* decision. This is a price one may pay for centralized management.

CONCLUSION.

A Writ of Certiorari should not issue in this case. No conflict exists between the lower Courts' opinions and any other reported Appellate or District Courts' decisions or FRB interpretation.

No important national question is presented since the Seventh Circuit has not outlawed the subtractional method of disclosure *per se*. The case is a narrow holding based on the disclosure statement in front of two federal courts.

No important question of federal law need be settled since the Seventh Circuit applied the current posture of the law to the facts of the case at bar. The Act and Regulation Z are to be broadly and liberally construed in view of the remedial nature of the Act.

For all the authorities and reasons cited above, the petition should be denied.

Respectfully submitted,

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No. 76-182

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

BENEFICIAL FINANCE CO. OF GARY, INC., *Petitioner,*

v.

DOROTHY ALLEN, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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September 1976

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REPLY BRIEF FOR PETITIONER

The body of the brief in opposition (pp. 5-9) is devoted to an attempted dissection of the loan disclosure statement at issue in this case. It tracks the criticisms made by the courts below and adds some new ones. The discussion proves nothing more than that, as was indicated in the petition (Pet. 7), any attempt to deal compendiously and in tabular form with a relatively complex matter is susceptible to the criticism of anyone equipped with a measure of ingenuity who is looking for lack of clarity.

The logic of the order of dislosure in the statement at issue here was explained in the petition. It is not for a court to dictate some other order that seems to it more logical if the order of disclosure chosen is in the meaningful sequence required by the Federal Reserve Board, the agency that, unlike the courts, has been authorized by Congress to prescribe the form of disclosure statements.

Respondent goes far afield in her criticism of petitioner's disclosure statement. One of her more farfetched ideas is that, because the borrower is told in the introduction to the statement that "[t]he sum of the instalments is shown below as the TOTAL OF PAYMENTS," the borrower is conditioned to add before he reaches the figures he is supposed to subtract. (Br. in Opp. 9.) A threshold explanation of the derivation of the opening figure in the tabular material that follows, which calls for no arithmetical operation on the part of the reader, could not possibly condition the reader to add instead of subtract.

Respondent asserts that some of the additional, nonmandatory material disclosed by petitioner is set forth in a way that violates Sections 226.6(b) and (c) of Regulation Z. (Br. in Opp. 7-9.) That is not so. Those provisions specifically allow the disclosure of additional material; they restrict only the way in which material inconsistent with mandatory material can be disclosed. There is no inconsistency in petitioner's voluntary disclosures. In any event, the courts below found no violation of Section 226.6(b) or (c).

The Court of Appeals found a violation solely of the requirement of Section 226.6(a) of Regulation Z that the required disclosures "shall be made . . . in meaningful sequence . . . ." It held that meaningful sequence

precludes a subtractional sequence. Respondent denies that the court meant so to hold (Br. in Opp. 9-11), but it is impossible otherwise to read the passage of its opinion that is quoted by respondent herself.

> "The disclosure form is for the borrower and must be presented in a conceptual framework a borrower can easily comprehend. The subtractional method does not provide such a framework." (Pet. 19a.)

It is not "this subtractional method we have before us" that is condemned by the court but "the subtractional method."

The Federal Reserve Board has made clear that a form using "the subtractional method" may be in meaningful sequence. The Board quite properly declines to regulate according to labels. Speaking through its staff in a commentary on this very case, it has reaffirmed the tenor of its prior pronouncements on the meaning of "meaningful sequence" and has said that " 'meaningful sequence' cannot—and should not—be defined by reference to some rigid concept of arithmetical progression." (Pet. 30a.)

This Court should take this case and correct the error of the Court of Appeals in trying to impose just such a rigid concept.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF AMICUS CURIAE OF NATIONAL CONSUMER FINANCE ASSOCIATION IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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BRIEF AMICUS CURIAE OF NATIONAL CONSUMER FINANCE ASSOCIATION IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

INTEREST OF NATIONAL CONSUMER FINANCE ASSOCIATION [1]

The National Consumer Finance Association (hereinafter referred to as "NCFA") organized in 1916, is a national trade association of companies engaged in the consumer credit business, representing approximately 900

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[1] Counsel for both Petitioner and Respondent have consented to the filing of this brief.

member companies, including petitioner, operating over 17,000 loan and finance offices. NCFA represents organizations ranging from a single small office to substantial nationwide chain organizations. The business of these companies is primarily direct credit lending to consumers and the purchase of sales finance paper on consumer goods. However, some members have retail subsidiaries, others are subsidiaries of manufacturers, others are subsidiaries of highly diversified corporations, and since the 1970 Amendments to the Bank Holding Company Act, 12 U.S.C. 1843(c)(8), a growing number are subsidiaries of bank holding companies.

Finance companies held $37 billion of the consumer installment credit outstanding at the end of May, 1976 according to figures released by the Federal Reserve Board. This amounted to 22.6% of the total installment credit outstanding from all credit grantors. At that time finance companies held $17.1 billion in personal loans, $12.1 billion in retail auto paper, $3.3 billion in mobile home paper, and $4.5 billion in other forms of consumer credit. Thus it can be seen that the companies represented by NCFA hold a significant portion and a wide variety of the consumer credit outstanding in the United States, and that they perform an important function in the American economy.

The resolution of the question presented by the decision of the Court of Appeals is important to the consumer finance industry, of which NCFA members account for over three-fourths of the business done annually. The subtractional method of disclosure which the Court of Appeals found to be in violation of Regulation Z is the same order used by Petitioner and related companies in their credit operations in most states and is the same order used by other member companies of NCFA in many states. Judicial resolution of this unsettled question by this Court is of utmost importance

to NCFA member companies throughout the United States.

In a recent survey of a small, but it is believed representative, sample of the membership of NCFA, approximately one half of the member companies responding stated that they use a subtractional method of presentation in making disclosures required by the Truth in Lending Act and Regulation Z. Thus, billions of dollars in outstanding credit of finance companies alone will be affected by this decision.

Should the question presented in this case go unresolved, consumer finance companies, as well as other creditors, may be subject to a large number of law suits, not only in the Seventh Circuit, but throughout the nation. The potential monetary liability of each creditor is substantial under Section 130 of the Truth in Lending Act. 15 U.S.C. 1640. It could be, in addition to any actual damage sustained by a person, twice the amount of the finance charge, up to $1,000, plus costs and attorney's fees. In a class action suit, it could be up to the lesser of $100,000 or 1% of the defendant creditor's net worth. And, should this question go unresolved, creditors in other circuits, relying on their understanding of Regulation Z and the Federal Reserve Board's interpretation of Regulation Z, who continue to use the subtractional method of disclosure after March 23, 1977, will be subject to potential liability in a class action suit of the lesser of $500,000 or 1% of net worth. 15 U.S.C. 1640(a)(2)(B), as amended Pub. L. 94-240.

Many of the member companies of NCFA have offices and conduct business operations in more than one state. Some conduct business in most states. If the question presented in this case goes unresolved, these companies will be forced to operate under continually uncertain legality, and may be forced to continually alter their operating procedures, at great expense, from district to

district and circuit to circuit because of varying judicial responses to the decision of the Seventh Circuit Court in this case. Such a result will not only be harmful to consumer finance companies and other creditors, but will be harmful to consumers by adding to the overall cost of credit, and will be harmful to Congress' intent in enacting the Truth in Lending Act of allowing the Federal Reserve Board to ". . . prescribe regulations to carry out the purposes . . ." of the Act. 15 U.S.C. 1604.

ARGUMENT

The consumer credit business, in which Petitioner and all other NCFA member companies are engaged, has traditionally and historically been governed by state laws and regulations requiring strict formalities with respect to documents and customer disclosures. Today the "consumer finance industry is still the most heavily regulated segment of the consumer credit industry." Report of the National Commission on Consumer Finance (GPO, Dec. 1972), p. 45. In recent years, Congress has assumed legislative responsibility in the field of consumer credit and has enacted laws governing the conduct of creditors on a national basis. Such legislation includes the Consumer Credit Protection Act, 15 U.S.C. §§ 1601 et seq. (1968), of which the Truth in Lending Act is a part. Subchapter I—Consumer Credit Cost Disclosure § 1601-1665.

The Truth in Lending Act explicitly delegates to the Federal Reserve Board the authority and responsibility to

> ". . . prescribe regulations to carry out the purposes of this subchapter. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith." 15 U.S.C. 1604.

The Board has prescribed such regulations, Regulation Z, 12 C.F.R. § 226 et seq., and from time to time prescribed amendments to it. It has more frequently offered interpretations of it for the guidance of creditors and consumers. The Act also delegates to the Federal Trade Commission the responsibility for enforcing the requirements of Regulation Z, as regards finance companies, 15 U.S.C. 1607(c).

The provision of Regulation Z which is at issue in the instant case, 12 C.F.R. § 226.6(a), provides in pertinent part as follows:

> "The disclosures required to be given by this Part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology prescribed in applicable sections."

The lower court held that the disclosures given by Petitioner to Respondent were not "in meaningful sequence."

The Federal Reserve Board has not interpreted this provision in such a way as to find the disclosure statement used by Petitioner in violation of this provision, nor has the Federal Trade Commission enforced this provision based on such an interpretation.

For the court below to venture into the domain delegated to the Federal Reserve Board and the Federal Trade Commission is contrary to the intent of Congress.

The Federal Reserve Board has exercised the authority granted to it under 15 U.S.C. 1604 and has promulgated Regulation Z. Petitioners and many other creditors have interpreted § 226.6(a) of that Regulation as allowing the kind of subtractional order of disclosure used in the dis-

closure form in the instant case. That interpretation by creditors is not contrary to any interpretation of the Federal Reserve Board, or its staff.

In a letter dated May 20, 1976, which was issued nine (9) days after the lower court's denial of Petitioner's motion for rehearing, the Assistant Director of the Office of Saver and Consumer Affairs of the Federal Reserve Board stated as follows:

> "In staff's opinion, the Regulation does not require all presentations to be made within the rigid confines of some particular series of additions or subtractions. In fact, we believe it is not really appropriate to speak of a "summation" or "subtractional" method as though these were two separate and mutually exclusive types of disclosures . . .
>
> "In staff's view, 'meaningful sequence' cannot—and should not—be defined by reference to some rigid concept of arithmetical progression. Since a primary purpose of this requirement and of the Truth in Lending Act as a whole is to adequately inform consumers of the terms and costs of credit, we believe that § 226.6(a) requires that related terms be presented in an order which will assist the customer in understanding their relationship. Given the wide variety in credit transactions, 'meaningful sequence' must be determined by reference to the particular set of disclosures under consideration . . ."

Although this letter is an informal staff opinion and not subject to the procedures prescribed by Section 130 (f) of the Truth in Lending Act, as amended by P.L. 94-222, it indicates that the opinion of the Federal Reserve Board's staff as to the meaning of § 226.6(a) is contrary to the decision of the lower court. Such informal staff opinions should be given great deference. *Philbeck* v. *Timmers Chevrolet, Inc.*, 499 F. 2d 971 (5th Cir., 1974); *Eby* v. *Reb Realty, Inc.*, 495 F. 2d 646 (9th

Cir., 1974); *Bone* v. *Hibernia Bank*, 493 F. 2d 135 (9th Cir., 1974).

Additional weight should be given to such staff opinions in view of the recent amendment to Section 130(f) of the Truth in Lending Act. Section 130(f) now provides that:

> "No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board *or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor*, notwithstanding that after such act or omission has occurred such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason." (Added language italicized.)

This recent amendment indicates the continuing intention of Congress, stated in the original Truth in Lending Act, to delegate to the Federal Reserve Board the authority to ". . . prescribe regulations to carry out the purposes . . ." of the Act.

CONCLUSION

The petition for a writ of certiorari should be granted so that this Court can decide whether the decision of the Circuit Court of Appeals is contrary to the provision of the Truth in Lending Act in that the decision usurps the authority delegated to the Federal Reserve Board by the Act and that the decision misinterprets the Regulation promulgated by the Federal Reserve Board in exercising that authority.

Unless these questions are resolved by this Court, there will be continuing uncertainty in lower courts and confusion among creditors. More litigation will ensue and the ability of the Federal Reserve Board to carry out the purposes of the Truth in Lending Act by prescribing and administering regulations will be impaired. The potential financial loss to creditors, in litigation and in continued uncertainty regarding the legality of operating procedures, is great.

Accordingly, the National Consumer Finance Association respectfully submits that the Petition for a Writ of Certiorari should be granted.

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